STATEMENT OF JOANN SEBASTIAN MORRIS, ACTING DIRECTOR, OFFICE OF TRIBAL SERVICES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, AT THE HEARING BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS, ON H.R. 1448, A BILL WHICH WOULD AMEND THE INDIAN CHILD WELFARE ACT OF 1978.

May 10, 1995

Good afternoon, Mr. Chairman and Members of the Committee. I am pleased to be here to present the Department of the Interior's views on H.R. 1448, a bill "To amend the Indian Child Welfare Act of 1978 to require that determinations regarding status as an Indian child and as a member of an Indian tribe be prospective from the date of birth of the child and of tribal membership of the member, and for other purposes.". The Indian Child Welfare Act of 1978 (ICWA) is the heart of child welfare in Indian Country. The Act provides the needed protection of Indian children who had been neglected under our country's welfare system.

The Department of the Interior does not support the amendments to the ICWA as proposed in H.R. 1448. The proposed amendments infringe on the internal affairs of sovereign tribal governments by interfering in individual tribes' decisions on enrollment and membership. As an example of this infringement, and unlike the existing Act, an Indian child would not be covered under H.R. 1448 if the parent is not a member of an Indian Tribe when the child is born.

H.R. 1448 fails to recognize the diversity with which the more than 500 tribal governments have chosen to determine their tribal membership. As an example of this diversity many tribes have blood quantum requirements while others have ancestral lineage or community membership criteria. Despite this, the proposed amendments appear to assume that eligibility criteria for tribal enrollment or membership are the same for all tribes. The amendments, which further assume that a newborn is automatically enrolled into a tribe at birth, could also have the affect of

usurping the Constitutions and By-Laws of sovereign tribal governments, by prohibiting the retroactive effect of tribal membership.

There are also cases where final decisions on questions of membership may take months. The Indian child may be vulnerable during prolonged evaluations of criteria for membership. Further, in child custody proceedings, membership would be determined effective from the actual date of admission to the tribe. Again, the Indian child is without protection under the H.R. 1448 amendments if the parent has not been a member prior to the custody proceeding.

Enactment of the Indian Child Welfare Act of 1978 was prompted by deep concerns among Indian tribes about the historical experiences of American Indian and Alaska Native children with the country's child welfare system. These concerns included:

- the disproportionately large number of Indian and Alaska Native children who were being removed from their families,
- the frequency with which these children were placed in non-Indian substitute care and adoptive settings,
- a failure by public agencies to consider legitimate cultural differences when dealing with Indian and Alaska Native families, and
- a severe lack of services to the Indian and Alaska Native population.

To address these concerns, Congress enacted ICWA, landmark legislation, to:

- re-establish tribal authority to accept or reject jurisdiction over child custody proceedings involving Indian or Alaska Native children in off-reservation settings,

- require state courts and public child welfare agencies to follow specific procedural, evidentiary, dispositional and other requirements when considering substitute care placement or termination of parental rights for Indian and Alaska Native children, and
- provide for intergovernmental agreements respecting child care services and resources.

By passing ICWA, the Congress explicitly recognized "the special relationship between the United States and Indian tribes and their members and the Federal responsibility to Indian people." ICWA reiterates that the Congress has plenary power over Indian affairs and has assumed the responsibility for the protection and preservation of Indian tribes and their resources, none of which is more vital to the continued existence of Indian tribes, than that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe, that an alarmingly high percentage of Indian families are broken up by non-tribal public and private agencies, and that while exercising their recognized jurisdiction over Indian child custody proceedings, states have often failed to recognize the cultural and social standards of Indian communities and families.

Thus, ICWA is premised on the concept that an Indian child's tribe, rather than the State or the Federal Government, is the primary authority in matters involving the relationship of an Indian child to his or her tribe. The clear understanding of the Congress, as expressed in ICWA, was that failure to give due regard to the cultural and social standards of Indian tribes and Alaska Natives and the failure to recognize essential tribal relations was detrimental to the best interests of Indian and Alaska Native children.

In summary, the proposed amendments to ICWA would have the effect of restricting coverage and protection of Indian children under the Act.

The reasons for the proposed amendments are unclear. It appears that the intent is to address situations where a parent is uncertain about his or her tribal affiliation, or where neither of the biological parents is an enrolled member of an Indian tribe, or where a parent enrolls in a tribe during a child custody proceeding in order to transfer the case to a tribe or to provide further protection for the parent. These instances may indeed delay or prevent adoptions of newborns or delay child protection placement decisions, but neither the parent nor the child should be denied their right to tribal membership and their cultural and biological heritage by an Act of Congress. If the affected tribe wants to deny this heritage, then that is the tribe's decision and some tribes have such a provision in their Constitution and By-Laws.

The proposed amendments could put in jeopardy those Indian children who are born away from their reservations and that are not immediately enrolled in a tribe. Should such children come into the custody of the State courts, this legislation would deny the rights of the affected tribe, Indian parent, or legal custodian to intervene in any aspect of the child custody proceeding. Under this scenario, if a child was not enrolled, the tribe would not have to be notified even though the child might qualify for tribal membership. Thus, by treating these children as "non-Indian", the mandates of the ICWA could be effectively nullified and, thereby, accelerating the number of Indian children placed in non-Indian adoptive homes before there is a chance to enroll them in a tribe. This legislation would be a step backward for Indian tribes and would take us back to the practice of wholesale adoptions of Indian children which the Congress, in its wisdom, set out to correct through the enactment of ICWA.

While we acknowledge that state courts and non-tribal agencies may experience occasional problems with the order of placement preferences for substitute care specified in the ICWA, the Act also contains some latitude whereby the affected tribe may establish a different order of preference, by tribal resolution, than those identified in the Act.

Other than ongoing enforcement problems related to state compliance with major provisions of the ICWA and the difficulties Indian tribes experience in accessing state resources, Indian tribes have not identified the need for any changes in the ICWA.

This concludes my prepared statement. I will be pleased to answer any questions the Committee may have.